

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CORNELL EUGENE WILSON, JR.,

Petitioner,

v.

WARDEN, FCI-HERLONG ,

Respondent.

No. 2:21-cv-0793 KJM KJN P

ORDER

On January 31, 2023, respondent filed a motion to dismiss under 28 U.S.C. § 2254, Rule 4. Petitioner did not oppose the motion.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion” Id.

Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” Id.

Finally, Rule 41(b) of the Federal Rules of Civil Procedure provides:

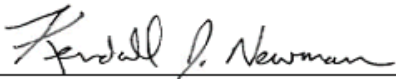
Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction,

improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.

Id.¹

Good cause appearing, IT IS HEREBY ORDERED that, within twenty-one days from the date of this order, petitioner shall file an opposition, if any, to the motion to dismiss. Failure to file an opposition will be deemed as consent to have the: (a) action dismissed for lack of prosecution; and (b) action dismissed based on petitioner's failure to comply with these rules and a court order. Such failure shall result in a recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

Dated: February 27, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ The Federal Rules of Civil Procedure apply in a habeas action unless they are "inconsistent with any statutory provisions" or with the Rules Governing Section 2254 Cases. See Rule 12, Rules Governing Section 2254 Cases; Mayle v. Felix, 545 U.S. 644, 654-55 (2005).